

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

No. 2:10-CR-00046-F-1

No. 2:15-CV-00036-F

LATORY MARFRIA RHINES,)
Petitioner,)
)
v.)
)
UNITED STATES OF AMERICA,)
Respondent.)

O R D E R

This matter is before the court on Latory Marfria Rhines's pending Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [DE-97, -99].¹

A review of the record reveals that Rhines previously filed a § 2255 motion that was resolved on the merits. *See* July 14, 2014 Order [DE-80]. Pursuant to 28 U.S.C. § 2244(b)(3)(A), “[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” In this case, Rhines must first obtain an order from the Fourth Circuit Court of Appeals before this court will consider any successive petition under 28 U.S.C. § 2255.

In light of the foregoing, Rhines's pending Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [DE-97, -99] is DISMISSED without prejudice to him to seek pre-filing authorization from the Fourth Circuit Court of Appeals.

A certificate of appealability will not issue unless there has been “a substantial showing

¹ Rhines's initial attempt to initiate a claim for relief under 28 U.S.C. § 2255 was a non-conforming document [DE-97], which was filed on September 21, 2015. At the court's direction, Rhines filed a “conforming” motion [DE-99] on October 13, 2015.

of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court’s assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). However, when a district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

The court concludes that Rhines has not made the requisite showing to support a certificate of appealability. Therefore, a certificate of appealability is DENIED.

SO ORDERED.

This the 19 day of October, 2015.



James C. Fox
Senior United States District Judge